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Summary record of the 3498th meeting

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Chair: Ms. Jelić (*Vice-Chair*)

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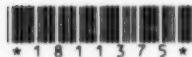
Organizational and other matters, including the adoption of the report of the Working Group on Communications (*continued*)

Draft general comment No. 36 on article 6 of the Covenant (Right to life)
(*continued*)

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Ms. Jelić (Vice-Chair) took the Chair

The meeting was called to order at 3.05 p.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications (continued)

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (continued) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** invited the Committee members to resume their consideration of draft general comment No. 36, beginning with paragraph 16.
2. **Mr. Shany** (Rapporteur for the general comment) drew the members' attention to an informal document containing proposed amendments to paragraphs 16, 18 and 22 based on the Committee's discussion at its previous meeting on the draft general comment.

Paragraph 16

3. **Mr. Shany** said that, at the previous meeting on the draft general comment, Mr. de Frouville had proposed that the first sentence of paragraph 20 should be moved to paragraph 16. The second sentence of paragraph 16 would then be amended to read: "The Covenant does not provide an enumeration of permissible grounds for deprivation of life, but by requiring that deprivations of life must not be arbitrary, article 6 (1) implicitly recognizes that some deprivations of life may be non-arbitrary."
4. *Paragraph 16, as amended, was adopted.*

Paragraph 18

5. **Mr. Shany** said that Mr. Heyns had proposed inserting a new first sentence in paragraph 18 which would read: "Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law." That sentence broadly reflected the first sentence of article 12 of general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life, which was cited in footnote 44.
6. It was further proposed that the words "For example", at the beginning of what was now the third sentence, should be deleted, that the word "potentially" should be inserted before "lethal force" in the same sentence; that the words "must be reasonable and necessary" should be replaced with "must be strictly necessary"; and the words "non-lethal alternatives" should be replaced with "other alternatives". It was also proposed that the words "as far as possible" should be deleted from the phrase "directed, as far as possible, only against the attacker" and that the last phrase should be amended to read "the threat responded to must involve imminent death or serious injury".
7. In addition, in his proposed amended version of paragraph 18, the last sentence would be replaced with the following two sentences, which were based largely on proposals by Mr. Heyns and on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials: "The use of potentially lethal force for law enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. It cannot be used in order to protect private property or prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others."
8. **Mr. Heyns** said that he wished to propose deleting the word "private" before "property" in the last sentence. The last sentence of paragraph 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulated that the "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". He proposed referring to the "intentional lethal use of force" in the second-to-last sentence of paragraph 18.
9. **Mr. de Frouville** said that a clear distinction should be drawn between the legal restrictions applicable to the deprivation of life and the requirement that deprivation of life should not be arbitrary. The first three sentences of the paragraph might cause confusion in

that regard, since the first stated that deprivation of life was arbitrary if it was inconsistent with international or domestic law, whereas the third stated just the opposite: that "arbitrariness" should not be equated with "against the law". The relationship between the two concepts was also dealt with in paragraph 17 and in neither case was the distinction made as clearly as it had been in paragraph 12 of general comment No. 35 on article 9 (CCPR/C/GC/35), which was reflected in paragraph 18 of draft general comment No. 36. The French version of paragraph 18 should be aligned with the sentence that appeared in general comment No. 35, since the wording in English was exactly the same.

10. Along the same lines, paragraph 11 of that earlier general comment set forth a more satisfactory interpretation of what constituted an arbitrary action when it stated that "arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacked any legal basis was also arbitrary."

11. In his view, the judgment of the European Court of Human Rights referred to in footnote 46 was not entirely relevant. Paragraph 177 of that judgment cited paragraph 10 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which stated that law enforcement officials should "give a clear warning of their intent to use firearms ... unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons". It therefore had no bearing on situations of self-defence. On that basis, he proposed that the words "including warnings" should be deleted from the fourth sentence. The relevance of footnote 47, which referred to paragraph 13.2 of the Committee's Views in the case of *Suarez de Guerrero v. Colombia*, was also questionable, since it had involved a summary execution rather than self-defence on the part of law enforcement officials. Lastly, he felt that the reference to the protection of private property in the last sentence fell outside the scope of the "use of potentially lethal force for law enforcement purposes".

12. **Mr. Ben Achour** said that it was unclear whether the phrase in the fourth sentence concerning "the application of lethal force by a person acting in self-defence" referred solely to law enforcement officials, who were legally authorized to use force, or whether it also referred to private persons. He agreed with Mr. de Frouville that the wording of the third sentence of the French version should be aligned with the second sentence of paragraph 12 of general comment No. 35. As the Committee was working largely on the English version of the paragraph, it would be necessary at some point to go closely over the French version.

13. **Mr. Politi** said he concurred with Mr. de Frouville's observation concerning the logical contradiction between the first and third sentences.

14. **Mr. Heyns**, remarking that, according to the second sentence, an instance of the deprivation of life could be authorized by law and still be arbitrary, said that he assumed that the sentence referred to domestic rather than international law. He was in favour of the inclusion of a reference to self-defence, since States were obliged to protect the right to life and to adopt legal provisions regulating self-defence and protecting individuals from criminal activity.

15. **Mr. Shany**, noting that, as indicated by the foregoing speakers' comments, the first part of the paragraph was conceptual in nature, the second part dealt with self-defence by private individuals and the third part focused on the use of potential lethal force by law enforcement officials, said that he agreed with Mr. Heyns that States were obligated to create a framework that would strike a balance between the right to life of attackers and that of persons who were subject to an assault. He also agreed that footnote 46 should be deleted, since it referred to law enforcement rather than to self-defence.

16. There was a major overlap between arbitrariness and illegality, but the two should not be equated. Because some relatively minor forms of illegality might not constitute arbitrariness, the words "as a rule" had been included in the first sentence. The notion of arbitrariness was also far broader than that of illegality. He therefore proposed inserting the word "fully" before the words "equated with 'against the law'" in the first phrase of the third sentence.

17. In the interest of greater clarity and in line with the observations made by other Committee members, he proposed inserting the word "private" before "person" in the phrase "the application of potentially lethal force by a person acting in self-defence". He was also in favour of deleting the words "including warnings" from the fourth sentence and the references to private property and custody in the first part of the last sentence, which would then read "It cannot be used to prevent the escape of a suspected criminal or a convict ...".

18. With regard to paragraph 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, he proposed maintaining the second-to-last sentence as it stood and inserting a sentence at the end of the paragraph that would read: "The intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat."

19. **Mr. Politi** proposed amending the second sentence to read: "A deprivation of life may, however, be authorized by domestic law and still be arbitrary."

20. **Mr. Ben Achour** proposed replacing "in order to protect private property" in the last sentence with "in order to protect public or private property". In his view, the paragraph was clear. Legal deprivation of life could nonetheless be arbitrary, as with the death penalty, for example. He could therefore not understand the objections to the first two sentences. There was no reason to change the way they were currently worded.

21. **Mr. Heyns** said that he agreed with Mr. Ben Achour. He proposed removing the word "however" from the second sentence of the paragraph, as it suggested that the second sentence, which should remain, contradicted the first.

22. **Mr. Shany** said that removing "however" could address a number of points. Unlike Mr. de Frouville, he was of the view that, as a rule, unlawful deprivation of life was arbitrary. Unlawfulness and arbitrariness were strongly correlated.

23. **Ms. Brands Kehris**, supported by **Mr. Ben Achour**, said that removing "however" would make the meaning of the first two sentences less clear. The second sentence was in fact in opposition to the first.

24. **Mr. de Frouville** said that the proposed changes had not addressed his concerns.

25. **Mr. Shany** said that, to sum up, if the Committee members agreed, he would add the word "private" before the word "person" in the fourth sentence of the paragraph, which concerned actions taken in self-defence, and would remove the words "including warnings" and footnote 46. The final sentence of the current version of the paragraph would become the last sentence but one and would be amended to remove the references to private property and custody. The sentence that had been proposed by Mr. Heyns based on paragraph 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which referred to the intentional lethal use of firearms, would then become the final sentence of the paragraph.

26. **The Chair** said that, if there were no further comments, she took it that the Committee members wished to adopt paragraph 18, subject to the amendments that had been discussed and the consideration of the French version requested by Mr. Ben Achour.

27. *Paragraph 18 was adopted on that understanding.*

28. **The Chair**, recalling that the Committee had adopted paragraphs 19, 20 and 21 at an earlier meeting, invited the members to resume their consideration of paragraph 22.

Paragraph 22

29. **Mr. Shany** said that paragraph 22 was an introduction to section III of the draft general comment, which concerned the duty to protect life by law. Since the Committee's previous discussion of the paragraph, it had undergone a number of changes. In the last sentence, for example, the word "reasonably" had been inserted before the words "foreseeable threats", while the second sentence had been amended to incorporate the following wording from article 2 (2) of the Covenant: "as may be necessary to give effect to the right to life". In its previous consideration of the paragraph, the Committee had not

decided whether to retain the word "legal" in the last sentence of the paragraph, which stated that States parties were required to take appropriate legal measures to protect life from all reasonably foreseeable threats. He was in favour of retaining it.

30. Following a discussion in which **Mr. de Frouville**, **Mr. Heyns**, **Mr. Ben Achour**, **Mr. Fathalla**, **Mr. Santos Pais**, **Mr. Politi**, **Ms. Brands Kehris** and **Mr. Shany** took part, the members agreed that the paragraph should reproduce the relevant wording of article 2 (2), i.e., "such laws or other measures as may be necessary ...".

31. *Paragraph 22, as amended, was adopted.*

The meeting was suspended at 4.20 p.m. and resumed at 4.35 p.m.

Paragraph 23

32. **Mr. Shany** said that paragraph 23 expanded on the notion of the protection by law of the right to life. It stated that the circumstances in which a person could be deprived of his or her life by the authorities should be limited. They should also be strictly defined by law. The paragraph had not attracted many comments from States parties or other stakeholders. Two States parties had expressed unease with the words "full reparation", but the term was a part of the Committee's established lexicon. In a joint submission, a number of non-governmental organizations had raised an interesting question about the provision of reasoning for specific incidents in which lives were taken, and that point could be addressed when considering a later section of the draft general comment.

33. **The Chair** said that she took it that the Committee members wished to adopt paragraph 23 as it stood.

34. *Paragraph 23 was adopted.*

Paragraph 24

35. **Mr. Shany** said that paragraph 24 also dealt with the creation of a protective legal framework and had elicited relatively few comments. The Government of the Russian Federation had stated that it was a matter that should be left for national legislation and that not all the forms of deprivation of life listed in the paragraph were necessarily arbitrary. However, the purpose of the general comment was in part precisely to guide legislative developments, and he was not persuaded that the specific crimes that were listed were not of a nature that could lead to arbitrary deprivation of life. The United States, for its part, had expressed the view that the Covenant did not introduce wide-ranging positive obligations in terms of the duty to define specific criminal offences. That was not the position of the Committee, and that objection would be addressed in due course.

36. The Independent Expert on the enjoyment of human rights by persons with albinism had proposed that the Committee should add "witchcraft" to the list of criminal prohibitions, but that crime was very region-specific. The other phrase that the Independent Expert had advocated including, namely "ritual killings", seemed more appropriate. The National Consultative Commission on Human Rights of France had proposed alluding to "femicide" in the paragraph, but that issue was dealt with separately later in the text.

37. In a joint submission, a number of non-governmental organizations had advocated referring to the "unnecessary and disproportionate use of firearms", to which he did not object. Amnesty International had registered some uncertainty about whether the paragraph applied to individual actors or law enforcement officials. In his view, the word "individuals" was all-encompassing and deliberately ambiguous; it would not be desirable to suggest that only private individuals should be covered. Amnesty International had expressed concern about the possible war-related connotation of "disproportionate"; however, it would not be possible to dispense with that word without removing the entire reference to the "disproportionate use of firearms". In summary, he proposed adding the word "unnecessary" before "disproportionate" and adding the phrase "ritual killings" after "terrorist attacks".

38. **Mr. de Frouville**, supported by **Mr. Fathalla**, said that, although he had been in favour of including a reference to "femicide", he was satisfied that it was not necessary

given its inclusion in later paragraphs. He wondered whether specifying "death threats" in the list of crimes was necessary; threats were not on the same level as the other forms of arbitrary deprivations of life mentioned, such as homicide and lynching. In addition, he would be in favour of deleting the reference to "terrorist attacks" for a number of reasons: the Committee did not have a definition of terrorism, the phrase was so broad that it could refer both to acts by individuals and those attributable to a State, and terrorist attacks did not necessarily cause arbitrary deprivations of life. Likewise, the phrase "other manifestations of violence or incitement to violence that are likely to result in a deprivation of life" seemed to exceed the scope of the acts to which the Committee intended to refer.

39. **Ms. Brands Kehris** said that it would take some analysis to ensure that the list of acts to be prohibited was sufficiently inclusive and yet not too broad. While she understood the Rapporteur's reasons for opposing the inclusion of the word "witchcraft", she wished to point out that the term encompassed a very broad category of types of killing, including, in certain parts of the world, the killing of children thought to be possessed. The term "ritual killings" might not cover such acts.

40. **Mr. Santos Pais** said that there was an argument for keeping the reference to "death threats", which could lead to deprivation of life by, for example, inflicting great stress. He was also in favour of retaining the reference to "terrorist attacks".

41. **Mr. Shany** said that he believed many of Mr. de Frouville's concerns could be resolved by rearranging the first sentence so that it began, "States parties must enact a protective legal framework which includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life, such as ..." and then proceeded to the list of examples.

42. The phrase "ritual killings" would convey the notion that certain culturally based crimes should be covered, and he supported its inclusion after "blood feuds". It was important to include "terrorist attacks" in the list, as it would not do for the world to draw the conclusion that the Committee did not concern itself with such acts. By using the word "individuals", the Committee had intentionally retained a measure of ambiguity as to the potential perpetrators of acts of terrorism and did not stray into the contentious area of prescribing any particular definition for States parties.

43. **Ms. Brands Kehris** said that the Committee must clarify whether the list of acts was exhaustive or instead enumerated the acts that were to be prohibited as a minimum. In the latter case, she would support the proposals. It was important to state explicitly that killings that might be deemed acceptable in certain cultural sub-contexts must be prohibited when they amounted to forms of arbitrary deprivation of life. In a recent case involving voluntary cannibalism, for instance, the State concerned had lacked a legal provision that would have enabled it to punish the perpetrator appropriately.

44. **Mr. Shany** said that the list was contextual rather than exhaustive and that he would be sure to include, after the reference to "ritual killing", a footnote referencing the report of the Independent Expert on the enjoyment of human rights by persons with albinism, which mentioned witchcraft.

45. *Paragraph 24, as amended, was adopted.*

Paragraph 25

46. **Mr. Shany**, noting the structural significance of paragraph 25, which laid out the positive obligation of States to protect life and introduced the concept of due diligence, said that few objections had been raised to the language it used. The Government of the United Kingdom of Great Britain and Northern Ireland had proposed changing "threats to life" to "reasonably foreseeable threats to life", which seemed to be a quite sensible addition. The Government of Norway had asked the Committee to clarify whether the final sentence of the paragraph referred to private lawful entities that had received delegated powers from the State, and that was indeed the case. The Government of the United States had contested the reference to a State's due diligence obligations vis-à-vis private parties, but the Committee's position had long been that the duty to ensure the rights set forth in the Covenant necessarily encompassed such a due diligence obligation. He did not propose that

the Committee should heed the proposals made by some experts and non-governmental organizations to reference the prohibition of light weapons, nor the suggestion by Amnesty International to delete "impossible or disproportionate burdens", which represented a hard-fought compromise phrase. Moreover, he did not see that it would be beneficial to introduce a notion of "foreign public officials". In short, the only change he advocated was the introduction of the word "reasonably" before "foreseeable".

47. **Mr. Heyns** said that he did not fully support the use of the word "impossible" in the phrase "impossible or disproportionate burdens"; it should be taken as understood that the Committee did not impose impossible burdens on States. The word "lawful" in the phrase "private lawful entities" seemed out of place and he would favour its deletion. As for current issues that States were called upon to address by means of positive measures, the Committee might usefully consider introducing a reference to the obligation of States to clear unexploded or abandoned landmines.

48. **Mr. Politi**, supported by **Ms. Brands Kehris**, said that he would support the deletion of the word "reasonable" from the phrase "undertake reasonable positive measures", as it somewhat diluted the proposition.

49. **Mr. Shany**, referring to Mr. Heyns' proposal to mention the clearing of landmines, said that he would not be in favour of introducing new obligations that States had not had time to review. He would not oppose the deletion of either "impossible" or "disproportionate" if the Committee was persuaded that one encompassed the other.

50. **Mr. Heyns** said that, as something that was impossible must also be disproportionate, "disproportionate" seemed to be the more appropriate adjective.

51. **Mr. Shany** said that there were fundamental differences between reasonableness and disproportionality. The former introduced the concepts of necessity and choice of means, whereas the latter alluded to a cost/benefit analysis. The phrase "impossible or disproportionate burdens" had been taken from a judgment by the Inter-American Court of Human Rights. Moreover, including a reference to reasonability might be helpful in allaying the concerns of some States that the Committee was being unreasonable in its interpretation of the Covenant.

52. **Mr. Politi** said that he would accept the retention of the word "reasonable" if the rest of the Committee supported it. However, members should be aware that, in so doing, the Committee was placing a rather limited and low-level list of obligations on States.

53. **Mr. de Frouville** said that "impossible or disproportionate" also reflected the phrasing used in an earlier judgment by the European Court of Human Rights. The notion of proportionality was important because the Committee could not expect a State to be everywhere at once.

54. **Mr. Shany** said that the word "reasonable" was in keeping with the Committee's usual requests for measures to be "appropriate" or "adequate". He took it that the Committee wished to delete "lawful" from the phrase "private lawful entities", remove the word "impossible", and introduce the word "reasonably" before "foreseen threats".

55. *Paragraph 25, as amended, was adopted.*

Paragraph 26

56. **Mr. Shany** said that the first issue addressed in the paragraph, namely the operation of external actors in a State's territory, had not prompted any controversy. The second issue raised, namely acts undertaken by the State itself and by corporate entities based in the State party, had elicited several comments. The Governments of the United Kingdom, Canada and Norway had indicated a preference to retain the word "direct", which was currently in square brackets, in the phrase, "having a direct, significant and foreseeable impact on the right to life of individuals".

57. The Government of Norway had suggested that including the notion of corporate social responsibility went beyond the scope of the Guiding Principles on Business and Human Rights, and the Russian Federation had commented that corporate social responsibility standards were not obligatory. However, the text merely implied that States

should take due account of relevant international legal standards. In a joint submission, a number of non-governmental organizations had suggested that a sentence should be added on States parties' obligation to carry out inquiries into the activities of other States on their territory. However, the issue was too specific for inclusion in the paragraph and, in any case, the question of inquiries was covered by the wording "appropriate measures".

58. Amnesty International had suggested amending the first sentence so that it covered not only States operating on the territory of other States, but also foreign third parties. That was a useful suggestion which could be accommodated by inserting "international organizations and foreign corporations" after "other States". It had also suggested deleting "direct" and "significant" from the phrase "having a [direct], significant and foreseeable impact" and replacing "areas subject to their jurisdiction" with "places subject to their jurisdiction". He proposed that the Committee should adopt the latter amendment, but was reluctant to delete both "direct" and "significant", as doing so would subject States to an excessive burden of responsibility.

59. The Russian Federation had suggested that the paragraph should address terrorist, extremist and organized crime groups. Since the second sentence covered States parties' obligations with regard to all activities under their jurisdiction, of which the activities of corporate entities was only one category, other types of activity were not excluded. The same responsibilities that applied to corporate entities would apply *mutatis mutandis* to other entities. Lastly, the United States had objected to the notion of a positive obligation to protect life from all foreseeable threats.

60. **Mr. de Frouville** said that, as it stood, paragraph 26 confused two distinct issues. The first related to whether the State party involved in a communication had jurisdiction over the individual invoking his or her rights. The second related to States parties' obligations in relation to the extraterritorial activities of corporate entities subject to their jurisdiction and their responsibilities in the event that those obligations were not met. The general comment should address the latter issue. In that regard, the Committee's conclusions in the case of *Basem Ahmed Issa Yassin et. al. v. Canada* were relevant and, since the general comment should reflect the Committee's most recent jurisprudence, those observations should figure in the paragraph. In that case, the Committee had concluded that States parties had an obligation to ensure that rights under the Covenant were not impaired by the extraterritorial activities of enterprises under their jurisdiction and that States parties had an obligation of reasonable due diligence over their extraterritorial activities when those activities affected individuals. In order to ensure that those conclusions were taken into account, he proposed redrafting the paragraph such that it read:

Les États doivent aussi veiller, en exerçant la diligence voulue et en prenant des mesures positives raisonnables, à ce que toute activité menée en dehors de son territoire par des organes, des personnes ou des entités qui relèvent de sa juridiction soit compatible avec l'article 6. À cet effet, les États ont l'obligation de mettre en place un cadre juridique offrant des moyens de recours aux victimes de ces activités.
[States must also ensure, by exercising due diligence and by taking reasonable positive measures, that all activities undertaken outside their territory by bodies, persons or entities subject to their jurisdiction are consistent with article 6. To that end, States parties have an obligation to establish a legal framework that makes remedies available to victims of those activities.]

61. **Mr. Heyns** said that it was important to introduce a degree of limitation on States parties' accountability in the paragraph; otherwise it might be unworkable and, as a result, have no effect at all. He therefore supported retaining the word "direct". Some States parties had argued that they could not be held accountable for violations of the right to life arising from aerial bombardments carried out in other States when those States had given their consent for such strikes to take place. He proposed introducing an additional sentence into the paragraph stating that States could not lawfully consent to or assist in acts on their territory that constituted unlawful deprivations of life.

62. **Mr. Politi** said that he agreed with the point raised by Mr. de Frouville and wished to state, for the record, that he was not in favour of retaining "direct". The text should not impose an obligation to determine whether an activity had had a direct or an indirect impact

on the right to life. Moreover, if States parties were required to take responsibility only for the demonstrably direct impact of their activities on the right to life, it would be too easy for them to shirk their responsibilities.

63. **Mr. Muhumuza** said that, like Mr. Politi, he did not support retaining "direct", which, if kept, would allow States parties to deny responsibility for their actions on the basis that their impact on the right to life was not direct in nature. He was unsure that the word "places" could be used to describe all areas within a State party's jurisdiction.

64. **Mr. de Frouville** said that he wished to clarify that he was proposing an alternative text because the paragraph no longer reflected the Committee's jurisprudence or the point that it really wished to get across, which was that States parties should ensure that the consequences of the lawful activities of a corporate entity subject to their jurisdiction were consistent with article 6, not simply the extraterritorial activities themselves, as the text seemed to suggest. If the Committee decided to maintain the current version of the paragraph, however, he would be in favour of deleting the word "significant" [notable], which was too vague and left too much room for interpretation. He was not in favour of retaining the word "direct".

65. **Mr. Ben Achour** said that it was unclear to him how the paragraph failed to address the concerns raised by Mr. de Frouville. The text made it clear that States parties should supervise all activity on their territory and in other areas subject to their jurisdiction, in other words, areas that were not in their territories but were nonetheless under their control by virtue of the fact that corporate entities subject to their jurisdiction had their operations there, as had been the case for Canada in *Basem Ahmed Issa Yassin et. al. v. Canada*.

66. **Mr. Heyns** said that he continued to support retaining "direct", because the question at hand was not simply whether there was a causal link between an activity and its impact on the right to life, but rather whether that impact was direct and foreseeable.

67. **Ms. Kran** said that she agreed with Mr. de Frouville in that the general comment should reflect the Committee's latest jurisprudence. The adjective "significant" should be deleted, because States parties should not be absolved of their responsibility for the consequences of activities that had only a partial impact on the right to life. Her preference was for a second phrase that would read "having a direct and reasonably foreseeable impact on the right to life".

68. **Mr. Shany** said that introducing an entirely new text in the final reading of the general comment would be contrary to the logical progression of the drafting process and would set a bad precedent. He therefore could not agree to redraft the entire paragraph in line with Mr. de Frouville's proposals. Moreover, contrary to Mr. de Frouville's view, he felt that the paragraph reflected the Committee's conclusions in the case of *Basem Ahmed Issa Yassin et. al. v. Canada*.

69. The second sentence was not intended to deal primarily with corporations under States parties' jurisdictions, but rather with extraterritorial obligations relating to the activities of States parties themselves. Many activities in one State party — coal mining, to take just one example — could have indirect consequences on others. However, to try to tackle such a broad topic within the scope of a general comment on article 6 would be overreaching. In attributing legal responsibility, it was logical to introduce elements of causal proximity, which the words "direct", "significant" and "foreseeable" did. He agreed with Ms. Kran's proposal to amend the sentence to read "direct and reasonably foreseeable".

70. **Mr. de Frouville** said that he agreed that new texts should not be introduced at such a late stage in the drafting process, other than in exceptional circumstances. That said, his proposal was a reformulation of the paragraph, rather than a completely new text. In the case of *Basem Ahmed Issa Yassin et. al. v. Canada*, the Palestinian land on which the Canadian corporations had conducted their operations had not been subject to Canadian jurisdiction. The central question had been whether the victims in the affair, not the land on which the Canadian corporate entities had their operations, fell under Canadian jurisdiction.

71. **Mr. Ben Achour** said that, if the term "areas subject to their jurisdiction" was understood to include the control exercised by a State party over a corporate entity in an

area outside its territory, then that area could be considered to be subject to the jurisdiction of the State party. Perhaps the term "areas subject to their jurisdiction" was unclear. He would welcome a proposal for a reformulation from Mr. de Frouville.

72. **Mr. Shany** said that he would take the Committee members' views into account and circulate a redrafted version of the paragraph at the subsequent meeting on the general comment.

The meeting rose at 6 p.m.